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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1940

No. 620

LAURA S. K. SLOCUM, A. COHN AND MERWIN M. HART,
Petitioners,

vs.

THE FIRST NATIONAL BANK OF CHICAGO, AS SUCCESSOR TRUSTEE, JOHN C. MEINERS AND JOHN C. PARTRIDGE, INDIVIDUALLY AND AS MEMBERS OF A BONDHOLDERS' PROTECTIVE COMMITTEE UNDER A DEPOSIT AGREEMENT DATED DECEMBER 31, 1931, A. HARRIS, M. ROTHSCHILD, H. H. BAUM, SECURITY NATIONAL BANK OF SHEBOYGAN, WISCONSIN, AS TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF JOACHIM JOHANN, AND A. C. ALLYN & CO., A DELAWARE CORPORATION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF ILLINOIS, FIRST DISTRICT.

BRIEF AND ARGUMENT OF RESPONDENTS M. ROTHSCHILD, THE FIRST NATIONAL BANK OF CHICAGO, AND JOHN C. MEINERS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

MAX SWIREN,
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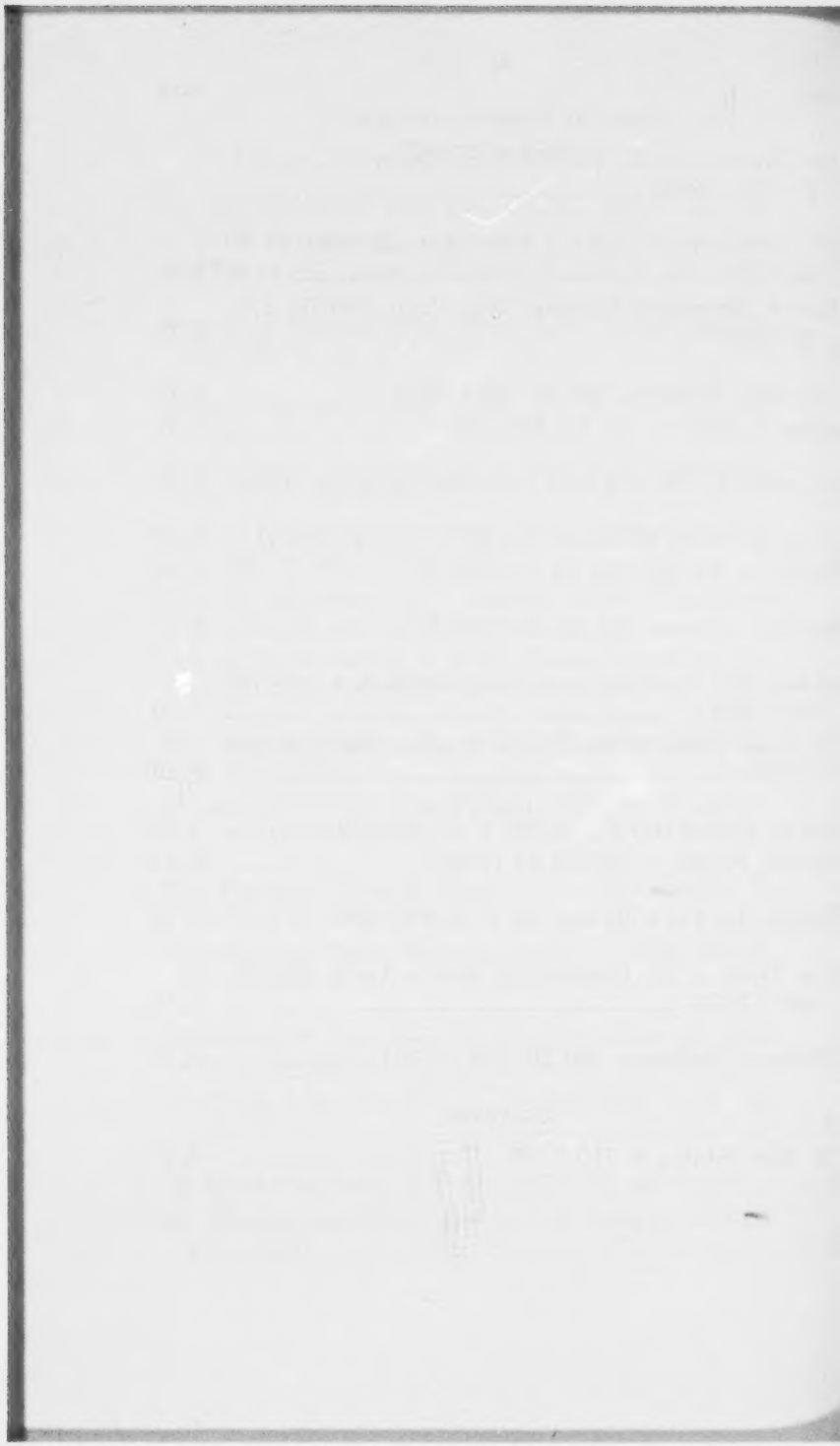

IN THE

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OCTOBER TERM, A. D. 1940

No. 620

LAURA S. K. SLOCUM, A. COHN AND MERWIN M. HART, *Petitioners,*

vs.

THE FIRST NATIONAL BANK OF CHICAGO, AS SUCCESSOR TRUSTEE, JOHN C. MEINERS AND JOHN C. PARTRIDGE, INDIVIDUALLY AND AS MEMBERS OF A BONDHOLDERS' PROTECTIVE COMMITTEE UNDER A DEPOSIT AGREEMENT DATED DECEMBER 31, 1931, A. HARRIS, M. ROTHSCHILD, H. H. BAUM, SECURITY NATIONAL BANK OF SHEBOYGAN, WISCONSIN, AS TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF JOACHIM JOHANN, AND A. C. ALLYN & CO., A DELAWARE CORPORATION, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF ILLINOIS, FIRST DISTRICT.

BRIEF AND ARGUMENT OF RESPONDENTS M. ROTHSCHILD, THE FIRST NATIONAL BANK OF CHICAGO, AND JOHN C. MEINERS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

The failure of the petitioners adequately to set forth the underlying facts requires their restatement. The most superficial examination of such facts discloses that all consti-

tutional questions have been twice waived by the petitioners and that, in any event, there is no substantial federal or constitutional question involved.

The Ashland Industries Building Corporation, under date of January 1, 1926, issued its First Mortgage Real Estate 6% Sinking Fund Gold Bonds (hereinafter termed the "Bonds") in the principal amount of $1,500,000. To secure the repayment of the Bonds, the debtor corporation executed its Indenture of Trust, conveying certain real estate therein described, to the Foreman Trust and Savings Bank as Trustee. (The respondent, The First National Bank of Chicago, is the Successor Trustee under the Indenture of Trust.) In addition, five individuals, including the respondent, M. Rothschild, executed, as accommodation sureties, a Guaranty of the indebtedness (R. 63-66). Three of such guarantors are made defendants to this proceeding. The Guaranty expressly provided that "whenever" the aggregate principal amount of Bonds outstanding shall have been decreased to $1,000,000 or less, "then and in such event, all and every of the obligations of the several Guarantors, and each of them, shall be deemed to be fully discharged and satisfied and this present Guaranty shall become wholly inoperative and of no effect" (R. 66).

The Trustee under the Indenture is, by Article 5, Section 13 of the Trust Indenture, expressly given the power "to demand and enforce said Guaranty and recover upon the same, and to accept and receive in satisfaction thereof such amount and amounts of money as the Trustee in its unlimited discretion may deem advisable; and to make, commence, prosecute, compromise and/or compound all and every such claims, demands, actions, suits and/or proceedings at law or in equity as by the Trustee may be deemed appropriate" (R. 64).

On or around January 1, 1932, the debtor corporation defaulted in the payment of its interest and sinking fund

obligations. By that time the aggregate principal amount of the Bonds then issued and outstanding had been reduced to $1,143,200 (R. 6, 8). Thereafter, a petition had been filed in the United States District Court for the Northern District of Illinois, Eastern Division, for the reorganization of the debtor corporation, pursuant to Section 77B of the Federal Bankruptcy Act. In this proceeding two of the petitioners, namely, Slocum and Hart, were represented by counsel (R. 47). A bondholders' committee was organized, of which the respondent, John C. Meiners, is a defendant to this proceeding. Bonds in the aggregate principal amount of $1,015,600 (net after withdrawals) were deposited with the committee (R. 45), being 88.83 % of the Bonds then issued and outstanding. One of the petitioners, Hart, is the holder of Certificates of Deposit (R. 84). The petitioner, Slocum, recovered a judgment against M. Rothschild in the amount of $684.42, representing unpaid interest to that date upon two $1,000 Bonds (R. 84). The Bonds have not matured and the principal amount is not as yet due and payable.

On May 25, 1938, during the pendency of the reorganization proceeding, the Security National Bank of Sheboygan, Wisconsin, as holder of bonds in the aggregate principal amount of $9,000, filed its complaint (hereinafter sometimes termed the "Original Proceeding" or "Security National Bank case"), in a "class" suit naming as defendants the respondents named herein, with the exception of the respondent, A. C. Allyn & Co. This complaint was brought by the Security National Bank in its own behalf and in behalf of all other bondholders (R. 5-7). Thereafter, this complaint was amended by the Security National Bank and as amended it alleged that the Security National Bank had made a thorough examination of the financial affairs of the Guarantors; that as a result of such examination, the plaintiff was of the opinion that the Guarantors were in no position to make any substantial cash payment upon the

Guaranty; that the defendant, M. Rothschild, was the holder, directly or indirectly, of Bonds in the aggregate principal amount of $143,200; that, on information and belief, such Bonds had been tendered for cancellation to The First National Bank of Chicago, as Successor Trustee, together wih a release of Rothschild's right of subrogation, in consideration of the acknowledgment of The First National Bank of Chicago of the termination of the Guaranty, pursuant to its express terms, and the release of M. Rothschild from any further obligations thereunder (R. 7-10). The amended complaint then stated:

> "* * * which said conditional offer of tender was, by said Successor Trustee, by reason of uncertainties as to its powers, duties and obligations under said Indenture and said Guaranty, thereupon refused and rejected. By reason of the foregoing, plaintiff fears that save by the intervention of a court of equity, the advantages and benefits of the aforementioned proposed tender by said M. Rothschild will be lost to the plaintiff and to the other holders and owners of said Bonds similarly situated and represented by it in this proceeding." (R. 9.)

The First National Bank of Chicago, among others, filed its answer to that complaint and prayed:

> "* * * for the construction by the court of the provisions of said Indenture with reference to the rights, powers, duties and authority of the Trustee with reference to said guaranty and the construction of the provisions of said guaranty agreement with reference to the release and discharge of said guarantors upon the surrender and cancellation of the bonds proposed to be tendered herein and further prays for the instructions of the court with regard to the action herein proposed to be taken." (R. 13-14.)

Upon that record a final decree was entered on August 9,

1939, construing the Guaranty and finding it to be terminated by virtue of its express terms and the Guarantors discharged upon the reduction of the principal amount of the Bonds then issued and outstanding to $1,000,000 or less. In addition, the Court held the Successor Trustee to have the express power under the Trust Indenture to compromise and settle the Guaranty. Pursuant to that Final Decree and upon the cancellation of Bonds in the aggregate amount of $143,200 and the relinquishment by the respondent, M. Rothschild, of his right of subrogation, the Successor Trustee executed its release of the Guaranty, (a) under its express power as Successor Trustee to compromise and settle the Guaranty, and (b) by reason of the termination of the Guaranty by its own express limitation (R. 14-19).

The instant proceeding, which the petitioners now seek to have reviewed by this Court, constitutes a direct attack upon that Final Decree by way of a Bill in the nature of a Bill of Review. The purpose of the instant proceeding is to vacate and set aside the Final Decree in the original proceeding entered on August 9, 1939 (R. 37).

On July 27, 1938, thirteen days prior to the entry of the Final Decree, Slocum, one of the petitioners in the instant proceeding, filed her petition to intervene in the Original Proceeding. Her petition was denied by one of the judges of the Superior Court of Cook County upon the ground that it was insufficient, but "without prejudice, however, to further application" (R. 66). No further application was made by the petitioner Slocum either in the thirteen days preceding the entry of such Final Decree or in the thirty days thereafter, during which the trial court retained jurisdiction.

The petitioner Hart sought to intervene in the Original Proceeding subsequent to the entry of the Final Decree for the purpose of vacating it and setting it aside. The leave

to intervene was granted, but the relief sought was denied (R. 53-54; 56). After full hearing and argument, the Court found that the trial court had had jurisdiction both of the parties and of the subject matter and that the petitioner Hart had been represented in the Original Proceeding as a matter of law (R. 53-54; 56). No appeal from that order was ever taken.

After the filing of the amended complaint in the Original Proceeding by the Security National Bank, the Bondholders' Committee, representing 88.83% of all the outstanding Bonds, filed its petition in the Federal District Court, seeking leave to enter its appearance in the State Court proceeding, and to join in the relief prayed in the amended complaint. The matter was thereupon referred to Special Federal Master Grossman. An extended hearing was had at which two of the petitioners herein, Slocum and Hart, were represented by counsel (R. 47). The Special Master filed his report, recommending that the Committee be authorized to consent, in the State Court proceeding, to the relief prayed in the Amended Complaint of the Security National Bank. The report of Master Grossman appears in the record (R. 47-52).

The report of Special Master Grossman was approved over objections of petitioners Slocum and Hart herein, and an order in accordance with its recommendations was entered by the Federal District Court for the Northern District of Illinois, Eastern Division, on August 2, 1938 (R. 52).

On September 7, 1938, the instant proceeding to vacate the Final Decree entered in the Original Proceeding was commenced by petitioners Slocum and Cohn (R. 1). After full argument, the trial court dismissed the Bill on respondents' motions (R. 20). An Amended Bill was filed, in which petitioner Hart joined as plaintiff, which Amended Bill was dismissed on April 10, 1939 (R. 57). On May 20,

1940, the Appellate Court of the State of Illinois, First District, rendered its opinion and entered its order affirming the order and judgment of April 10, 1939, dismissing the Amended Complaint in these proceedings (R. 59, 80-88). The petition for leave to appeal to the Supreme Court of the State of Illinois was denied by the Supreme Court on October 16, 1940 (R. 107).

RESPONDENT'S CONTENTIONS.

With respect to the grounds for certiorari alleged by the petitioners, the contentions of this respondent are as follows:

I.

All constitutional questions have been twice waived by the petitioners.

A. By electing to appeal to the Appellate Court of Illinois, instead of directly to the Supreme Court of Illinois, petitioners have waived their right to raise any questions arising under the United States Constitution. By virtue of such waiver, the petitioners are precluded from raising such questions in this Court and such questions cannot form the basis for a writ of certiorari.

Central Union Telephone Co. v. *City of Edwardsville*, 269 U. S. 190 (1925);
City of Edwardsville v. *Central Union Telephone Co.*, 309 Ill. 482 (1923);
Levy v. *Broadway-Carmen Bldg. Corp.*, 366 Ill. 279, 291 (1937);
The People v. *Terrill*, 362 Ill. 61 (1935);
Van Dyck v. *Ill. Commercial Men's Ass'n*, 358 Ill. 458 (1934);
Ill. Rev. Stats., c. 110 § 199.

B. The contention that the order of the trial court deprived the petitioners of due process of law guaranteed by the Fifth and the Fourteenth Amendments to the Constitution was never urged in the lower court, nor was error with respect thereto assigned on appeal. By such failure so

to act, the petitioners are precluded from raising the constitutional questions in this Court.

Penn. R. R. Co. v. *Ill. Brick Co.*, 297 U. S. 447 (1936);

The Economy Dairy Co. v. *Otto Kerner, et al.*, 371 Ill. 261 (1939);

The Foreman-State National Bank v. *Sistek*, 358 Ill. 525 (1934).

II.

Each of the petitioners was represented in the Original Proceeding fully as a matter of law. The Final Decree in such proceeding was in all respects binding upon them, and the dismissal of the Amended Complaint for failure to state a cause of action was in all respects proper and raises no substantial federal question.

Supreme Tribe of Ben Hur v. *Cauble*, 255 U. S. 356 (1921);

Hartford Life Ins. Co. v. *Barber*, 245 U. S. 146 (1917);

Hansberry v. *Lee* (No. 29 dec. November 12, 1940), 61 S. Ct., 115;

White v. *McQueen*, 360 Ill. 236 (1935);

Miller v. *Rowan*, 251 Ill. 344 (1911);

O'Conner v. *The Board of Trustees*, 247 Ill. 54 (1910);

The Farmers' Loan & Trust Co. v. *Elevated R. R. Co.*, 173 Ill. 439 (1898).

ARGUMENT.

I.

A. All constitutional questions, whether federal or state, have been waived by the election of the petitioners to appeal, in the first instance, to the Appellate Court of the State of Illinois, rather than to the Supreme Court of the State of Illinois. Such constitutional questions cannot, therefore, form the basis for a writ of certiorari.

As a basis for the issuance of the writ of certiorari, the petitioners urge that they have been deprived of due process of law under the Fourteenth and Fifth Amendments to the United States Constitution. Such questions were never raised, argued or considered, either in the trial court or in the Appellate Court of the State of Illinois. They are contrary to, and unsupported by, the record facts. In any event, they have been twice waived by the petitioners.

In prosecuting their appeal to the Appellate Court of the State of Illinois, rather than to the Supreme Court of Illinois, the petitioners have waived their right to raise any constitutional question, whether federal or state. The applicable section of the Revised Statutes of the State of Illinois provides:

> "Appeals shall be taken directly to the Supreme Court in all cases in which a franchise or freehold or the validity of a statute or a construction of the Constitution is involved * * *" (Sec. 199, c. 110, Ill. Rev. Stats.).

Applying that exact provision of the Illinois Practice Act, this Court has held that a constitutional question can

only be raised upon direct appeal to the Supreme Court of Illinois, and that an appeal to the Appellate Court constitutes a waiver of all constitutional questions, both federal and state. *Central Union Telephone Co.* v. *City of Edwardsville*, 269 U. S. 190 (1925) is squarely in point and in all respects controlling. In that case the prohibition of the Constitution of the United States against impairment of a contract was invoked as a defense to an action in debt. From a judgment for the plaintiff the defendant appealed to the Appellate Court of the State of Illinois; there the judgment was affirmed. Leave to appeal was then granted by the Supreme Court of Illinois, but that Court refused to consider the defense urged under the Federal Constitution, saying:

> "All constitutional issues have been waived by taking an appeal to the Appellate Court and such issues are not proper for consideration here." *City of Edwardsville* v. *C. U. Telephone Co.*, 309 Ill. 482, 483-4 (1923).

This Court issued its writ of error to the Supreme Court of Illinois, but subsequently a motion to dismiss the writ of error was granted and the decision of the Supreme Court of Illinois affirmed. In sustaining that holding, this Court said (269 U. S. at 194, 195):

> "The construction of this statute has been uniformly held to be, that where a question involves the Constitution, it must be taken on error or appeal to the Supreme Court, and that if it be taken to the Appellate Court on other grounds, the party taking the appeal or suing out the writ of error shall be held to have waived the constitutional questions. *Indiana Millers Ins. Co.* v. *People*, 170 Ill. 474; *Robson* v. *Doyle*, 191 Ill. 566; *Case* v. *Sullivan*, 222 Ill. 56; *Poe* v. *Ulrey*, 233 Ill. 56; *Haas Co.* v. *Amusement Co.*, 236 Ill. 452; *Scott* v. *Artman*, 237 Ill. 394; *Comm'rs* v. *Shockey*, 238 Ill.

237. The city, therefore, moves to dismiss the writ of error.

* * *

"It seems to us that the practice under the statute of Illinois above quoted is entirely fair. If the litigant has a constitutional question, federal or state, he may take the case directly to the Supreme Court and have that question decided, together with all the other questions in the case, and then if the federal constitutional question is decided against him, he may bring it here by writ of error or application for certiorari. If he elects to take his case to the Appellate Court, he may have the non-constitutional questions considered and decided, but he gives up the right to raise constitutional objections in any court. There is some complaint that counsel could not infer that the constitutional questions referred to in the statute were federal questions, because the Supreme Court of Illinois had not so decided before this case. We have not been able to determine from the Illinois decisions cited above whether any of the constitutional questions held to be waived therein were federal until the present case. It is not, however, a forced or strained interpretation to hold that 'cases * * * in which the validity of a statute or construction of the Constitution is involved' include validity under, or construction of, both constitutions. When so declared by the state court it should bind us unless so unfair or unreasonable in its application to those asserting a federal right as to obstruct it. This is no such case."

The practice so affirmed remains unquestionably the Illinois practice today. *Levy* v. *Broadway-Carmen Bldg Corp.*, 366 Ill. 279, 291 (1937); *The People* v. *Terrill*, 362 Ill. 31 (1935); *Van Dyck* v. *Ill. Commercial Men's Ass'n*, 358 Ill. 458, 464 (1934).

In the latter case the Supreme Court of Illinois said:

> "We are convinced that a question is presented here under the United States Constitution and that if the appeal had been taken to the Appellate Court that question would have been waived."

B. The failure to raise the constitutional question in the trial court and to assign it as error upon appeal constitutes a waiver thereof. Such constitutional questions cannot, therefore, form the basis for a writ of certiorari.

This Court has specifically recognized and approved the repeated holding of the Illinois Supreme Court that a constitutional question is not preserved for review unless "urged in the lower court, the ruling on it preserved in the record, and the error assigned on appeal." *Penn. R. Co.* v. *Ill. Brick Co.*, 297 U. S. 447, 462. In that decision this Court refused to consider the questions arising under the Federal Constitution, but which had not been raised in the trial court, saying:

> "No such question was, by answer, motion or otherwise, expressly raised in the trial court. * * * The Illinois statute requires that in cases involving construction of the Federal Constitution appeals from circuit courts shall be taken directly to the supreme court (citing the statute and cases). And as definitely shown by its decisions, that court will not take jurisdiction unless it appears from the record that the constitutional question was urged in the lower court, and ruling on it preserved in the record and the error assigned on appeal. (Citing *Foreman-State Nat. Bank* v. *Sistek*, 358 Ill. 525, 529-530; 193 N. E. 513. *Hoffman* v. *Sears Community Bank*, 356 Ill. 598, 601; 191 N. E. 280. *Albrecht* v. *Omphghent Township*, 324 Ill. 200, 202; 154 N. E. 898.) While the order of that court transferring the case does not specify the grounds on

which it was based, the petitioner states that the supreme court necessarily held the constitutional questions had not been properly raised and that, on the oral argument, the chief justice stated that the transfer would be made because of petitioner's failure properly to raise and preserve the constitutional questions. The appellate court so understood the grounds and effect of the order and held that by transferring the case the supreme court eliminated the constitutional questions. As the highest court of the State declined to consider them because not raised in the circuit court or presented to it in accordance with practice that unquestionably was well established and reasonable, this court is without jurisdiction to consider either of them. *Chicago, I. & L. Ry. Co.* v. *McGuire,* 196 U. S. 128, 131. *Hulbert* v. *Chicago,* 202 U. S. 275. *Cox* v. *Texas,* 202 U. S. 446, 452. *Louisville & Nashville R. Co.* v. *Woodford,* 234 U. S. 46, 51." *Cf. City of Edwardsville* v. *C. U. Tel. Co.,* 309 Ill. 482, 483-4; *United Gas Company* v. *Texas,* 303 U. S. 123, 139.

No constitutional questions were presented to the trial court by the petitioners.* None were, or could be, presented to the Appellate Court of the State of Illinois. Both by their failure to raise and argue the question before the Chancellor and preserve the record, and their failure to appeal directly to the Supreme Court of Illinois, the petitioners have irrevocably waived all constitutional questions, whether federal or state.

---

*The petition for writ of certiorari, at page 8, states that "The Federal question was properly raised." The most cursory examination of the citations to the record in support of that statement will establish how utterly the petitioners have failed to raise or even suggest the existence of the constitutional question, either in the trial court or in the Appellate Court. So also, the petition for leave to appeal to the Supreme Court of the State of Illinois (R. 79-105) makes no mention of their existence.

II.

Even had the correct appellate procedure been followed and the alleged constitutional questions been properly preserved, the order of the trial court dismissing the Amended Complaint was in all respects proper and raises no substantial federal question.

The holding of *Hansberry* v. *Lee,* 61 S. Ct. 115, decided by this Court on November 12, 1940, and relied upon by the petitioners, has no relationship to the instant facts. If the doctrine of "party by representation" has any meaning, the facts of this case necessarily require its application. The petitioners could in no way have been more fully represented in the Original Proceeding. The plaintiff in the Original Proceeding was the Security National Bank of Sheboygan, Wisconsin, holder, as Trustee, of $9,000.00 principal amount of Bonds undeposited with the Bondholders' Committee. It filed the suit as the representative of all other bondholders, and unquestionably directly represented both Cohn and Slocum as the holders of undeposited Bonds, and indirectly represented Hart, as the holder of Bonds deposited with the Bondholders' Committee. In addition, The First National Bank of Chicago, as Successor Trustee, was made a party to the proceedings and actively participated. As Successor Trustee under the Indenture, pursuant to which the Bonds were issued, it also actively and directly represented Cohn and Slocum as the holders of undeposited Bonds, and indirectly represented Hart as the holder of Certificates of Deposit. Moreover, the Bondholders' Committee was made a party defendant and it, too, actively participated. It unquestionably represented Hart, whose Bonds were deposited with it and never withdrawn. Every requirement of due process is satisfied by such complete representation.

Decisions of this Court uniformly recognize that in a proper case persons, members of a class, who have efficient protection and representation in the proceeding are bound by the judgment or decree. *Hansberry* v. *Lee,* No. 29, decided November 12, 1940, 61 S. Ct. 115, 118; *Supreme Tribe of Ben Hur* v. *Cauble,* 255 U. S. 356 (1921); *Hartford Life Ins. Co.* v. *Barber,* 245 U. S. 146 (1917). The Original Proceeding is such a case and it has been so held in two separate proceedings (R. 14, 53-54, 85-86).

There can be no question but that bondholders are not indispensable and necessary parties to a proceeding in which the Trustee and the Bondholders' Committee are parties. For example, in *White* v. *McQueen,* 360 Ill. 236, the Supreme Court said:

> "We will consider first the question whether there is a lack of necessary parties. The general rule is that all persons interested in the subject matter of a suit should be made parties thereto, and that when foreclosure of a mortgage or trust deed is sought, the *cestuis que trustent,* as well as the trustee, should be made parties. To this rule there are, however, two well established exceptions. The first is where the absent parties are properly represented. In such a case it is sufficient to make such representatives parties to the suit. *A trustee under a trust deed represents the interest of the bondholders, and when he is made a party to a suit affecting such interest they are as much bound by the decree rendered in the suit as if they were individually made parties thereto for the reason that their interests receive actual and efficient protection.* (*Hale* v. *Hale,* 146 Ill. 227; Jones on Corporate Bonds and Mortgages, sec. 398.) Another exception

to the general rule arises where the beneficiaries are very numerous, so that the delay and expense of bringing them in becomes oppressive and burdensome. In such case they will not be deemed necessary parties where the trustee representing them is made a party. * * *'' (Italics supplied.)

Moreover, that case stands squarely for the proposition that the bondholders signing Deposit Agreements are represented fully by the persons with whom such Bonds are deposited. This was expressly pointed out by the Court as follows:

"It will be thus seen that the interests of the bondholders not filing deposit agreements were represented by appellants and those who did sign such agreement were represented by appellee. Appellants Hamel, the White Building Corporation, and White as owner of bonds and owner of the equity of redemption as trustee, were parties complainant. Thus all necessary parties are either personally or by representation before the court. We are of the opinion, therefore, that this ground of the demurrer cannot be sustained."

See, also, *Miller* v. *Rowan,* 251 Ill. 344 (1911); *O'Conner* v. *The Board of Trustees,* 247 Ill. 54 (1910); and *The Farmers' Loan & Trust Co.* v. *Elevated R. R. Co.,* 173 Ill. 439 (1898).

Apart entirely from the foregoing, however, the Amended Complaint was dismissed by the trial court for its failure to state a cause of action with respect to any party. The grounds for such dismissal were other than federal, and

the order of dismissal was affirmed by the Appellate Cou
of the State of Illinois, First District, and leave for appe
denied by the Illinois Supreme Court.

CONCLUSION.

The petition for the issuance of a writ of certiorari t
the Appellate Court of the State of Illinois, First Distric
should be denied.

Respectfully submitted,

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